

1 HON. JAMES L. ROBART
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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON (SEATTLE)

6
7 ANGELO DENNINGS, et. al,) NO. C10-1859-JLR
8 Plaintiffs,)
9 v.) DECLARATION OF
10 CLEARWIRE CORPORATION,) CHRISTOPHER A. BANDAS
11 Defendant.)
12
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14 Christopher A. Bandas declares under penalty of perjury that the following is true and
15 correct to the best of his knowledge, information and belief:

16 1. I am an attorney licensed to practice in Texas since 1993. I am also admitted to practice
17 in the U.S. District Court for the Southern, Northern, Eastern and Western Districts of
18 Texas, the Fifth Circuit, and the United States Supreme Court. I was named to Texas
19 Super Lawyers twice, in 2006 and 2011, and have been rated "BV" by Martindale-
Hubbell.

20 2. Since 2003, I have owned my own law firm. My practice for the first several years
21 consisted primarily of catastrophic personal injury cases. I also did a lot of commercial
22 litigation, representing businesses, doctors, local business men, and even a long-time
local judge in an oil contamination lawsuit.

23 3. With tort reform, my practice has evolved to cases outside of Texas, with a focus on mass
24 torts (pharmaceutical litigation). I have been doing objections regularly since 2006 or
2007. Mass torts and personal injury work still represent the majority of my practice.

25 4. Attached hereto as Appendices A and B, respectively, are the retainer agreements
26 executed by my clients Gordon Morgan and Jeremy De La Garza. I represented both of
27 these individuals in legal matters prior to my representation of them in this matter. Also

28 DECLARATION OF
CHRISTOPHER A. BANDAS - 1

Law Office of Michael Iaria, PLLC
1111 Third Avenue
Suite 2220
Seattle, WA 98101
206.235.4101

1 attached hereto as Appendices C and D, respectively, are true and correct copies of the
 2 full depositions of Messrs. Morgan and De La Garza.

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5. Mr. Morgan and Mr. De La Garza contacted me after receiving notice of the proposed class action settlement in this case. (Morgan Deposition at 8; De La Garza Deposition at 8). Both Mr. Morgan and Mr. De La Garza hired me to handle their interests as class members in the proposed settlement. (Morgan Deposition at 10-12; De La Garza Deposition at 8). The scope of my representation is outlined in my retainer agreements with my clients and I believe that my representation in this matter has been consistent with the scope of representation as set forth in the retainer agreements. The retainer agreements represent the entire agreement between me and my clients. The agreements were executed on November 30, 2012.

6. I did not solicit either one of my clients to serve as objectors in this case. They contacted me to protect their interest as class members and they have relied and continue to rely on my legal judgment in protecting their rights as class members.

7. In accordance with paragraph 2.3 of the retainer agreements, I obtained specific authorization from both of my clients prior to appealing the settlement and attorney fee award.

8. I believe that the claims, defenses, and other legal contentions as set forth in the pleadings I have filed in this Court and the Ninth Circuit are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law. I am also aware that this Court, as well as the Ninth Circuit, have not agreed with arguments I have asserted on behalf of my clients. I nevertheless believe that the pleadings I have filed and the arguments contained therein are in keeping with my obligations under Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure, as well as with my obligations to my clients. My arguments in opposition to the attorney's fees award, at issue in the current appeal in Ninth Circuit Case No. 13-35491, are set forth in the Appellants' Response to Plaintiff-Appellees' Motion for Summary Affirmance (a true and correct copy of which is attached to my counsel's pleadings as Exhibit 6).

9. I believe that my good faith in this case is further evidenced by a proposed stipulation sent to Class Counsel and filed with this Court on June 21, 2013 (Dkt. 137), a true and correct copy of which is attached hereto as Appendix 5. That proposed stipulation addresses the suggestion that I have interposed on behalf of my clients meritless objections for the sole purpose of threatening to hold up a legitimate class action settlement to extort a *quid pro quo* payment to drop the objection. The proposed stipulation is modeled directly on a solution to the "professional objector" problem proposed by Vanderbilt Law School Professor Brian Fitzpatrick. The use of an "anti-alienability" injunction or rule has his support as the best means of deterring "blackmail-minded objectors." *See* Brian Fitzpatrick, *The End of Objector Blackmail?*, 62

Vanderbilt Law Review 1623 (2009). As articulated by Professor Fitzpatrick, Fed. R. Civ. Proc. 23(e)(5) precludes an objector from withdrawing his or her objection without court approval, but there is no parallel provision in the Federal Rules of Appellate Procedure. Accordingly, I offered to stipulate to an injunction that would invite the same measure of review by this Court if there was any proposal to withdraw my clients' appeal in the Ninth Circuit. I am still willing to abide by such a requirement if ordered to do so by the Court.

10. Class Counsel moved for an appeal bond on June 13, 2013, seeking a bond in the amount of \$41,150 (Dkt. 134). I filed a response in partial opposition to the bond motion on June 24, 2013 (Dkt. 138). Class Counsel filed their reply on June 28, 2013. The Court issued an order on July 9, 2013 in which Objectors were ordered to post a \$41,150 bond or dismiss their appeal in five days, or face sanctions (Dkt. 149).
11. Although I formed the legal opinion that \$39,150 of the bond order represented "delay costs" that should not have been included as Rule 39 costs, I also understood that this was the Court's order. As elaborated in greater detail below, I formed then the present intention to challenge the Court's order in good faith to the best of my abilities, which included an emergency motion to stay the bond order (Dkt. 151) and an emergency motion to stay the bond order in the Ninth Circuit (Dkt. 11, 13-35491). I also formed the present intention that I would post the bond in full if we did not get the relief we sought from this Court or from the Ninth Circuit. When the Ninth Circuit denied Appellants' emergency motion on July 15, 2013 (Dkt. 14, 13-35491), I had the intention of posting the full \$41,150 bond ordered by the Court (Dkt. 149).
12. The reason I did not post the \$41,150 immediately after the Ninth Circuit denied Appellants' motion for emergency relief on Monday, July 15, 2013 was because my office manager Jan Petrus was on vacation that week. Ms. Petrus has been my office manager since approximately 2005. Her job responsibilities include bookkeeping and handling my law firm's finances, including issuing all checks. I do not do any of this myself and it has literally been years since I signed a check or handled any of the financial transactions of my law firm. I also do not know how to operate my firm's accounting software or issue checks, which I understand is done through that software process. I also did not know whether my firm had enough funds on hand to pay the bond from the firm's operating account or whether we would have to seek an advance from my firm's credit line, which is a banking transaction type that Ms. Petrus also handles. I knew that Ms. Petrus would be back in the office on Monday, July 22, 2013 and it was always my intention to post the bond upon her return to the office.
13. These are facts that I could have, and in fact should have, communicated to the Court. I regret not doing so and apologize to the Court. I also acknowledge that if I needed more time to post the bond (which I did, but only until Ms. Petrus's return to the office), it was my obligation to inform the Court and seek additional time from the Court. Given the nature of the transaction and the amount of money at issue, it did not even occur to me

1 that this type of transaction was of a type that Ms. Petrus could have handled remotely, so
 2 I also did not contact her to make these arrangements. I handled myself poorly and regret
 3 my actions, and I understand how that led to the issuance of the show cause order on
 4 Friday, July 19, 2013 (Dkt. 154). I represent to this Court that I would have paid the full
 5 bond without the Court's show cause order.

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14. On March 11, 2013, the Court issued an appeal bond order (Dkt. 117), that was opposed by Objectors (Dkt. 112) on the same legal basis that the instant bond order was opposed. However, the principal difference between the Court's bond order of March 11, 2013 (Dkt. 117) and the Court's bond order of July 29, 2013 (Dkt. 149) is that the first bond order (Dkt. 117) did not set a deadline by which Objectors/Appellants were required to post the court ordered bond or dismiss their appeal. At the time the Court issued its first bond order (Dkt. 117) there was pending at that time a Motion for Summary Affirmance filed by Class Counsel in the Ninth Circuit (Dkt. 6, 13-35038). Ultimately, that motion was granted by the Ninth Circuit on April 22, 2013 (Dkt. 11, 13-35038). When the Ninth Circuit granted the motion for summary affirmance (Dkt. 11, 13-35038), Objectors/Appellants filed a motion for panel rehearing (Dkt. 12, 13-35038) and Class Counsel almost immediately thereafter filed a motion for contempt against Objectors/Appellants for not having posted the bond ordered by Dkt. 117.

15. Because the Court's order of December 20, 2012 (Dkt. 99) did not make a final, appealable decision about attorney's fees (which had been proposed in Paragraph 16 of the proposed order, but was struck by the Court and deferred for consideration), Objectors' first appeal did not address their central concern: attorney's fees. Knowing that the issue of fees would not be presented or ultimately ruled upon in the then appeal of the Court's first final order (Dkt. 99), Objectors/Appellants made the decision on advice of counsel to abandon that first appeal, and dismiss that appeal (Dkt. 13, 13-35038).

16. My actions in challenging the Court's July 9, 2013 bond order (Dkt. 149) were in keeping with my understanding of *Azizian v. Federated Dept. Stores*, 499 F.3d 950 (9th Cir. 2007). In *Azizian*, the appellant failed to post the appeal bond ordered by the trial court. However, the appellant there "proffered payment of the undisputed portion of the bond." *Id.* at 962. That is why I proffered \$2,000 on July 9, 2013 to the Court. I did not and have never disputed that portion of the appeal bond. True and correct copies of the letters accompanying the \$2,000 checks submitted on July 9, 2013, and July 15, 2013, are attached hereto as Appendices F and G.

17. Beyond what the appellant did in *Azizian*, and taking as guidance that opinion's discussion of *In re Cardizem CD Antitrust Litigation*, 391 F.3d 812 (6th Cir. 2004), I also filed on behalf of my clients an emergency motion for stay in this Court on July 9, 2013 (Dkt. 151), which was denied, and an emergency motion for relief in the Ninth Circuit (Dkt. 11, 13-35491).

1 18. At every step in this Court and in the Ninth Circuit I, on behalf of my clients, articulated
2 the basis for contesting the \$39,150 in costs included in the bond order. Because I
3 believe that \$39,150 could not be counted in the bond order, I took every good faith legal
4 action to contest that portion of the order.

5 19. As stated above, when I was not able to obtain the emergency relief I sought for my
6 clients in the Ninth Circuit to avoid having to post \$39,150 in what I viewed as
7 impermissible delay costs in the bond, I made the decision to post the entire bond amount
8 of \$41,150. As discussed, however, I recognize that I did not post the bond in the time
9 period ordered by the Court and have only the explanation offered in this declaration.

10 20. With the exception of this Court second bond order (Dkt. 149), I have not failed to act
11 timely with respect to any of this Court's orders to the best of my knowledge. There was
12 no deadline in the Court's first bond order (Dkt. 117), and I ultimately dismissed my
13 clients' appeal exactly as the Court ordered (Dkt. 13, 13-35038).

14 DATED this 15 day of August, 2013, in Corpus Christi, Texas.



15 16
17 Christopher A. Bandas
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APPENDIX A

CLASS ACTION OBJECTOR
POWER OF ATTORNEY AND CONTINGENT FEE AGREEMENT

This agreement ("Agreement") is made between Gordon B. Morgan ("Client(s)" or "you") and BANDAS LAW FIRM, P.C. (hereinafter "Attorneys" or "BLF").

In consideration of the mutual promises contained herein, Client(s) and Attorneys agree as follows:

1. SCOPE AND METHOD OF REPRESENTATION

- 1.1 Attorneys' Legal Services.** You agree Attorneys will: Prepare and file on your behalf an objection to proposed class action settlements in the following matter and represent you in any appeal therefrom (the "Objection"): Case No. 2:10-cv-01859-JLR; *Dennings v. Clearwire Corporation*; In the United States District Court for the Western District of Washington.
- 1.2 Method of Representation.** BLF is a Texas law firm located at 500 N. Shoreline, Suite 1020, Corpus Christi, Texas 78471, (361) 698-5200. Our lawyers are licensed in Texas and in certain federal courts. However, if necessary, Attorneys will seek admission before the Court *pro hac vice* and/or as required by the applicable federal and/or state and/or local rules of practice applicable this litigation and/or will seek to associate local counsel in order to effectuate this representation in compliance with any such rules. Client authorizes that Attorneys prepare any Objection(s) for filing with the Court and, if necessary, any appeals therefrom.
- 1.3 Purpose of Representation:** As a member of the above referenced class, your legal rights are affected by the proposed settlement in that case. As a class member, you have the right to comment and object to the proposed settlement as prescribed by the Court in the notice of proposed class action settlement and Rule 23 of the Federal Rules of Civil Procedure. As a class member, you have the right to seek legal advice and have a lawyer represent you with respect to making any comments or objections to the proposed settlement. You acknowledge that, prior to the execution of this agreement, you contacted me seeking legal advice about your rights and options as a class member. You further acknowledge the following: (1) that you were not solicited by me or any other lawyer; (2) you have not been paid or promised any money, incentive or any other consideration to assert your rights as a class member with an interest in the proposed settlement; and (3) you authorize the disclosure of this fee agreement to the Court or any counsel in the case if requested.

2. YOUR REPRESENTATIONS AND DUTIES AS AN OBJECTOR

- 2.1** You represent that you are a member of the proposed settlement class based upon your review of the class definition contained in the class notice you have reviewed at the following website: www.denningssettlement.com.

- 2.2 If requested, you represent you can demonstrate you are a member of the settlement Class through documentation or by affidavit.
- 2.3 In return for your agreement and representations made herein, attorneys agree that no settlement or resolution will be made of your objection or any appeal therefrom without your prior approval and you shall retain the right to determine whether to proceed with this objection or any appeal therefrom, including the right to approve any settlement or resolution of same.

3. ATTORNEYS' FEES, EXPENSES AND PAYMENTS TO YOU

- 3.1 **Class Action Settlement:** If the proposed class action settlement is approved by the Court, you will receive the full amount of any benefits you are entitled to receive under the settlement as a class member (If a Claim is required you will usually need to file a claim to receive benefits; Attorneys may assist you in filing a claim, but they are not required to do so). Attorneys shall not be entitled to receive any portion of your share of the benefits under the class settlement and have no interest in any benefits you may be entitled to receive as a class member. You understand that by objecting to this particular settlement you may make your receipt of benefits under this particular settlement less likely in the event a court rejects the settlement based upon the arguments asserted by Attorneys on your behalf.
- 3.2 **Incentive Award or Payment:** Attorneys may petition the Court for a payment to you, or may ask class counsel or defendant(s) to make a payment to you, in recognition of your service as an objector and/or for other factors related to your service as an objector. This is referred to herein as an Incentive Award or Incentive payment. You understand any incentive award or payment sought will never exceed \$5,000. You understand that it cannot be determined with certainty in advance whether you will qualify for an incentive payment or award at all. You understand that Attorneys must follow all applicable laws and rules (including but not limited to seeking court approval, if applicable) as it may apply to incentive payments and awards, and such laws and/or rules may prevent or limit Attorneys' ability to obtain such an incentive award or payment for you. No incentive award or payment has been promised to you, and your service as an objector in this case is not conditioned on your receipt of any incentive payment or award. In the event an incentive award or payment is not made, you will receive only the benefits set forth in section 3.1, if any.
- 3.3 **Attorneys' Fees:** You will not be responsible to pay attorneys' fees or expenses of any kind. Attorneys are not sharing any portion of your recovery under paragraphs 3.1 or 3.2 above, if any, and Attorneys have no contingent interest in your recovery under paragraphs 3.1 and 3.2 above. Attorneys are not sharing, and cannot share, any attorneys' fees they might earn in this case with you. You agree Attorneys may seek and/or receive a fee for their services if they are successful in pursuing an objection to the class settlement or any appeal therefrom if agreed to by opposing counsel and/or awarded by the Court, subject to applicable rules and laws. The

attorneys' fees will be paid by the defendants and/or as part of the attorneys' fees awarded to class counsel and/or by award of the Court, and never from your portion of any recovery or settlement under paragraphs 3.1 or 3.2. You acknowledge you do not have any interest in any such fees, if any. You further acknowledge the attorneys' fees may substantially exceed any awards or payments to you as set forth above in Paragraphs 3.1 through 3.2.

4. CONFLICTS OF INTEREST

Attorneys have explained and you understand that, if successful, the objection or any appeal there from may result in the disapproval or rejection of the proposed settlement which may, in turn, cause you to lose your right to receive settlement benefits under the proposed settlement, to which you object. You acknowledge and agree to this risk and waive any conflict of interest arising from the objection or any appeal therefrom.

5. ADMINISTRATIVE MATTERS

- 5.1 **Termination:** Attorneys reserve the right to withdraw from this matter if you fail to honor this Agreement or for any reason permitted or required under the rules of the court or state in which the class action is pending.
- 5.2 **Association of Co-counsel:** Attorneys may associate lawyers apart from those with Bandas law Firm, P.C. to assist in representing you if, before any association becomes effective, you agree in writing to the terms of the arrangement including (1) the identity of all lawyers or law firms involved, (2) whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation, and (3) the share of the fee each lawyer or law firm will receive, or if the division is based on the proportion of services performed, the basis on which the division will be made.
- 5.3 **No Guaranty of Results:** Attorneys will use their best efforts in representing you in this matter, but we cannot guarantee the outcome of any given matter. You acknowledge Attorneys have made no promises or guarantees concerning the outcome of this matter, and nothing in this agreement shall be construed as such a promise or guarantee.
- 5.4 **Entire Agreement:** This Agreement contains the entire agreement between us regarding this matter and the fees, expenses and payments relative thereto. This Agreement shall not be modified except by written agreement signed by both parties.

I certify and acknowledge that I have had the opportunity to read this Agreement, that I have voluntarily entered into this Agreement fully aware of its terms and conditions, and that I have received a copy of this Agreement.

Signed and accepted on this 30 day of November, 2012.

Client(s):

~~Attorneys.~~

Christopher A. Bandas

APPENDIX B

**CLASS ACTION OBJECTOR
POWER OF ATTORNEY AND CONTINGENT FEE AGREEMENT**

This agreement ("Agreement") is made between Jeremy De La Garza ("Client(s)" or "you") and BANDAS LAW FIRM, P.C. (hereinafter "Attorneys" or "BLF").

In consideration of the mutual promises contained herein, Client(s) and Attorneys agree as follows:

1. SCOPE AND METHOD OF REPRESENTATION

- 1.1 Attorneys' Legal Services.** You agree Attorneys will: Prepare and file on your behalf an objection to proposed class action settlements in the following matter and represent you in any appeal therefrom (the "Objection"): Case No. 2:10-cv-01859-JLR; *Dennings. v. Clearwire Corporation*; In the United States District Court for the Western District of Washington.
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- 1.3 Purpose of Representation:** As a member of the above referenced class, your legal rights are affected by the proposed settlement in that case. As a class member, you have the right to comment and object to the proposed settlement as prescribed by the Court in the notice of proposed class action settlement and Rule 23 of the Federal Rules of Civil Procedure. As a class member, you have the right to seek legal advice and have a lawyer represent you with respect to making any comments or objections to the proposed settlement. You acknowledge that, prior to the execution of this agreement, you contacted me seeking legal advice about your rights and options as a class member. You further acknowledge the following: (1) that you were not solicited by me or any other lawyer; (2) you have not been paid or promised any money, incentive or any other consideration to assert your rights as a class member with an interest in the proposed settlement; and (3) you authorize the disclosure of this fee agreement to the Court or any counsel in the case if requested.

2. YOUR REPRESENTATIONS AND DUTIES AS AN OBJECTOR

- 2.1** You represent that you are a member of the proposed settlement class based upon your review of the class definition contained in the class notice you have reviewed at the following website: www.denningssettlement.com.

- 2.2 If requested, you represent you can demonstrate you are a member of the settlement Class through documentation or by affidavit.
- 2.3 In return for your agreement and representations made herein, attorneys agree that no settlement or resolution will be made of your objection or any appeal therefrom without your prior approval and you shall retain the right to determine whether to proceed with this objection or any appeal therefrom, including the right to approve any settlement or resolution of same.

3. ATTORNEYS' FEES, EXPENSES AND PAYMENTS TO YOU
 - 3.1 **Class Action Settlement:** If the proposed class action settlement is approved by the Court, you will receive the full amount of any benefits you are entitled to receive under the settlement as a class member (If a Claim is required you will usually need to file a claim to receive benefits; Attorneys may assist you in filing a claim, but they are not required to do so). Attorneys shall not be entitled to receive any portion of your share of the benefits under the class settlement and have no interest in any benefits you may be entitled to receive as a class member. You understand that by objecting to this particular settlement you may make your receipt of benefits under this particular settlement less likely in the event a court rejects the settlement based upon the arguments asserted by Attorneys on your behalf.
 - 3.2 **Incentive Award or Payment:** Attorneys may petition the Court for a payment to you, or may ask class counsel or defendant(s) to make a payment to you, in recognition of your service as an objector and/or for other factors related to your service as an objector. This is referred to herein as an Incentive Award or Incentive payment. You understand any incentive award or payment sought will never exceed \$5,000. You understand that it cannot be determined with certainty in advance whether you will qualify for an incentive payment or award at all. You understand that Attorneys must follow all applicable laws and rules (including but not limited to seeking court approval, if applicable) as it may apply to incentive payments and awards, and such laws and/or rules may prevent or limit Attorneys' ability to obtain such an incentive award or payment for you. No incentive award or payment has been promised to you, and your service as an objector in this case is not conditioned on your receipt of any incentive payment or award. In the event an incentive award or payment is not made, you will receive only the benefits set forth in section 3.1, if any.
 - 3.3 **Attorneys' Fees:** You will not be responsible to pay attorneys' fees or expenses of any kind. Attorneys are not sharing any portion of your recovery under paragraphs 3.1 or 3.2 above, if any, and Attorneys have no contingent interest in your recovery under paragraphs 3.1 and 3.2 above. Attorneys are not sharing, and cannot share, any attorneys' fees they might earn in this case with you. You agree Attorneys may seek and/or receive a fee for their services if they are successful in pursuing an objection to the class settlement or any appeal therefrom if agreed to by opposing counsel and/or awarded by the Court, subject to applicable rules and laws. The

attorneys' fees will be paid by the defendants and/or as part of the attorneys' fees awarded to class counsel and/or by award of the Court, and never from your portion of any recovery or settlement under paragraphs 3.1 or 3.2. You acknowledge you do not have any interest in any such fees, if any. You further acknowledge the attorneys' fees may substantially exceed any awards or payments to you as set forth above in Paragraphs 3.1 through 3.2.

4. CONFLICTS OF INTEREST

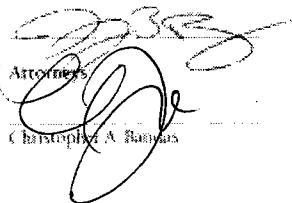
Attorneys have explained and you understand that, if successful, the objection or any appeal there from may result in the disapproval or rejection of the proposed settlement which may, in turn, cause you to lose your right to receive settlement benefits under the proposed settlement, to which you object. You acknowledge and agree to this risk and waive any conflict of interest arising from the objection or any appeal therefrom.

5. ADMINISTRATIVE MATTERS

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- 5.2 **Association of Co-counsel:** Attorneys may associate lawyers apart from those with Bandas law Firm, P.C. to assist in representing you if, before any association becomes effective, you agree in writing to the terms of the arrangement including (1) the identity of all lawyers or law firms involved, (2) whether fees will be divided based on the proportion of services performed or by lawyers agreeing to assume joint responsibility for the representation, and (3) the share of the fee each lawyer or law firm will receive, or if the division is based on the proportion of services performed, the basis on which the division will be made.
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- 5.4 **Entire Agreement:** This Agreement contains the entire agreement between us regarding this matter and the fees, expenses and payments relative thereto. This Agreement shall not be modified except by written agreement signed by both parties.

I certify and acknowledge that I have had the opportunity to read this Agreement, that I have voluntarily entered into this Agreement fully aware of its terms and conditions, and that I have received a copy of this Agreement.

Client(s):


Attorneys
Christopher A. Barnes

Plaintiff's Attorney and Contingency Fee Agreement Page 4

Page 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

5 MICHAEL BOBOWSKI, ALYSON BURN,) CASE NO. C-10-1859 JLR
STEVEN COCKAYNE, BRIAN)
CRAWFORD, DAN DAZELL, ANGELO)
6 DENNINGS, CHEYENNE FEGAN,)
SHARON FLOYD, GREGORY GUERRIER)
7 JOHANNA KOSKINEN, ELENA MUÑOZ-)
ALAZAZI, ELAINE POWELL, ROBERT)
8 PRIOR, ALIA TSANG, AND KYLE)
WILLIAMS, on behalf of)
9 themselves and all others)
similarly situated,)
10 Plaintiffs)
)
11 v.)
)
12 CLEARWIRE CORPORATION,)
Defendant)

ORAL DEPOSITION OF
GORDON MORGAN
Volume 1 of 1
December 17, 2012

17 ORAL DEPOSITION OF GORDON MORGAN, produced as a witness
18 at the instance of the PLAINTIFF, and duly sworn, was taken in
19 the above-styled and numbered cause on December 17, 2012 from
20 1:01 P.M. to 1:40 P.M., before Sylvia D. Trevino, CSR No. 2733
21 in and for the State of Texas, reported by Stenographic
22 method, at the offices of U.S. Legal Support, 802 N.
23 Carancahua, Corpus Christi, Texas, pursuant to the Federal
24 Rules of Civil Procedure, Notice and any provisions stated on
25 the record.

G. MORGAN

Page 2

1 A P P E A R A N C E S
2

3 ATTORNEY FOR THE PLAINTIFFS, GORDON MORGAN & JEREMY DE LA
4 GARZA

5 Christopher Bandas
6 THE BANDAS LAW FIRM
7 500 N. Shoreline, Ste. 1020
8 Corpus Christi, Tx 78401-0353
9 (361) 698-5200

10 CLASS ACTION ATTORNEY:

11 12 Johnathan K. Tycko
13 TYCKO & ZAVAREEI
14 2000 L. St. N.W. Ste. 808
15 Washington, D.C. 20036
16 (202) 973-0900
17 fax (202) 973-0950
18 jtycko@tzlegal.com

19 ATTORNEY FOR DEFENDANT, CLEARWIRE CORPORATION:

20 (Telephonically)

21 John Goldmark
22 DAVIS, WRIGHT, TREMAINE
23 1201 Third Avenue
24 Seattle, Washington 98101
25 Tel: (206) 757-8068
johngoldmark@dwt.com

G. MORGAN

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3	Direct By Mr. Tycko	4
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EXHIBITS

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9	2	Notice of Deposition	15
10	3	Objection to Proposed Class Settlement	17
11	4	Postcard-AllianceOne	18

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VERITEXT REPORTING COMPANY

212-267-6868

www.veritext.com

516-608-2400

G. MORGAN

Page 4

1 GORDON MORGAN,

2 having been first duly sworn, testified as follows:

3 E X A M I N A T I O N

4 BY MR. TYCKO:

5 Q Good afternoon. Could you state your full name and
6 address?

7 A Gordon Blaine Morgan. Office address, 4701 Ayers,
8 Suite 105, Corpus Christi, Texas 78415.

9 Q That's an office address?

10 A Yes.

11 Q What type of business do you have?

12 A I sell utility trailers, oil and gas utility
13 trailers, like sand haulers, fuel haulers --

14 Q Okay.

15 A -- vacuum trailers.

16 Q Do you also have a residential address?

17 A Yes.

18 Q What would that be?

19 A 14134 Palo Seco. It's two words. Corpus Christi,
20 Texas, 74818.

21 Q And do you understand that you're being deposed here
22 today in connection with an objection that you filed in the
23 Western District of Washington in Seattle?

24 A Yes.

25 Q In the Clearwire matter?

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1 A Yes.

2 Q Let me just go over some of the ground rules of the
3 deposition before we get started. Have you ever been deposed
4 before?

5 A Yes.

6 Q How many times, roughly?

7 A One time.

8 Q Okay. So you're probably familiar with the
9 procedures but there's a court reporter sitting there to your
10 left. She's going to write down my questions and your answers
11 so it's important that we not speak over each other. She can
12 only write down one thing at a time. If you think any of my
13 questions are unclear or vague, please let me know and I'll
14 rephrase them. If you don't let me know, we'll assume that
15 you understood the question. Do you understand that?

16 A Yes.

17 Q Now, are you a current or a former customer of
18 Clearwire?

19 A Former.

20 Q And when did you become a Clearwire customer?

21 A I'd be -- I'm guessing at the date, but it's
22 probably sometime around 2006, 2007.

23 Q Do you recall what type of service you signed up
24 for?

25 A I believe it was Internet and telephone.

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1 Q And for how long a time did you have Clearwire as
2 your internet and telephone provider?

3 A Again, I'm guessing, but it's probably in the
4 neighborhood of a year to a year and a half.

5 Q And did you have any trouble with the Clearwire
6 service during that --

7 A Yes; I remember having a lot of issues with it. And
8 I remember before we moved locations, we didn't -- we actually
9 picked up Warner Cable.

10 Q Did you use Clearwire at your business or at your
11 home?

12 A Business.

13 Q Business. Can you just give me some sense of what
14 the issues were -- that you had with Clearwire during the time
15 that you were using that service?

16 A I'm trying to remember exactly, but it seemed to me
17 like there was a lot of issues with the Internet, either the
18 speed or just the Internet itself failing, and I think we had
19 some telephone issues as well. I can't remember exactly what
20 it was.

21 Q Did you ever make any sort of claim against
22 Clearwire as a result of that?

23 A I know that we called Clearwire for repair work, but
24 I don't believe the claim was ever made; no.

25 Q Did you ever ask Clearwire to refund any of your

1 fees during that?

2 A No.

3 Q I assume you never brought a lawsuit against them?

4 A No.

5 Q When you -- when you switched from Clearwire to Time
6 Warner you said --

7 A Yes.

8 Q -- do you know whether Clearwire imposed any sort of
9 termination fee on you?

10 A I think -- I think they did, actually, but I
11 can't -- You know, I can't remember it's been so long. I
12 can't remember exact details, but I seem to remember having a
13 bit of an argument with them.

14 Q Do you recall the amount?

15 A No.

16 Q Do you recall what the basis for the fee was;
17 anything like that?

18 A Yeah. I think that we -- I think it was alleged
19 that we broke the contract or that we were under contract with
20 them, even though we moved and -- but we didn't continue with
21 them.

22 Q Okay. So do you know whether you paid what they
23 call an early termination fee?

24 A I don't think we paid it.

25 Q So what happened?

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1 A I guess they just went away.

2 Q Oh, okay. So did they ever actually charge you the
3 fee?

4 A No. I think they tried to charge the fee.

5 Q But you never paid it?

6 A Never paid.

7 Q And since the time that you canceled Clearwire and
8 switched to Time Warner, have you had any other business with
9 Clearwire at all?

10 A No.

11 Q Now, I take it at some point you learned about the
12 settlement in our case; is that right?

13 A Yes; I got a notice.

14 Q Okay. And do you recall how you got that notice?

15 A Came in the mail.

16 Q Postcard?

17 A Yes. *

18 Q And what did you do after you got that postcard?

19 A I contacted Mr. Bandas' office.

20 Q All right. And why did you do that?

21 A Because I know that he handles these types of case
22 and I didn't really understand what was going on with it.

23 Q Did you -- did you submit a claim?

24 A Yes. A claim has been submitted; yes.

25 Q And how did you do that?

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1 A By paper. It's a paper claim, I believe.

2 Q Did you fill that out or did somebody fill it out
3 for you?

4 A I filled it out.

5 Q Do you recall anything about the details of
6 the claim form, what you filled in on the claim form?

7 A It just asks approximately when we had the service
8 and I think that was really the only detail. It wasn't very
9 long.

10 Q Do you recall roughly when you sent in the claim
11 form?

12 A Three weeks ago, perhaps.

13 Q Did you -- did you review the settlement
14 agreement?

15 A I looked it over and, like I said, I just sent it on
16 to Mr. Bandas.

17 Q But you did actually look at the settlement
18 agreement itself?

19 A I looked at the document. I don't understand that
20 so I --

21 Q When you say "document", you mean the postcard they
22 sent you?

23 A Yeah.

24 Q So you never went and actually looked at the full
25 settlement agreement?

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1 A Oh, no.

2 Q It's like a 60-page document.

3 A No.

4 Q Okay. So the only document that you personally
5 looked at was the postcard notes that you got; is that right?

6 A That and the form; the claim form.

7 Q The claim form. The postcard notice and the claim
8 form?

9 A Yes.

10 Q And do you understand that you have filed an
11 objection asking the Court to disapprove the settlement?

12 A Yes.

13 Q And do you have an understanding of what the basis
14 for that objection is?

15 A No; I just -- I just sent it over to Chris and let
16 him handle it.

17 Q So do you have any -- do you have any, at this point
18 you yourself, do you have any objection to the terms of the
19 settlement?

20 A No.

21 MR. BANDAS: Objection. You're asking him for
22 a legal opinion. He has a lawyer, filed an objection, so when
23 you ask him the question do you personally have an objection,
24 obviously he does. Are you asking him if he has something
25 aside from the pleading I filed as his lawyer as his

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1 objection?

2 Q (BY MR. TYCKO) I'm asking do you personally have an
3 understanding of there being something in the settlement that
4 you object to?

5 A Like I said, I just -- I'd refer it over to Chris to
6 handle it.

7 Q Did you read the objection that Mr. Bandas filed in
8 court?

9 A No.

10 Q Have you ever read it prior to today?

11 A No.

12 Q Do you have any understanding of what the basis for
13 your objection is that you filed in court?

14 A No. I just let Chris handle it, like I said.

15 Q Did you hire Mr. Bandas' lawfirm to represent you as
16 on objector?

17 A Yes.

18 Q And what are the terms under which you hired him?

19 A It's -- we have a -- I guess it's power of attorney
20 agreement. I think it's -- He's pulling one out.

21 MR. BANDAS: You want a copy?

22 MR. TYCKO: Sure. Thank you. Maybe we could
23 just mark this as Exhibit 1.

24 (EXHIBIT 1 WAS MARKED)

25 MR. BANDAS: Look at it. Make sure it's yours

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1 and I've produced it in the right case.

2 THE WITNESS: Yeah.

3 MR. BANDAS: For friend on the phone, Counsel
4 is just looking at a document. That's why it went silent.

5 Q (BY MR. TYCKO) Let me just show you what we've
6 marked as Exhibit 1 of your deposition. Is that the retention
7 agreement that you entered into with Mr. Bandas' lawfirm in
8 connection with this matter?

9 A Yes; it is.

10 Q And that's your signature that appears on the last
11 page?

12 A Yes.

13 Q And do you have any other understandings or
14 agreements with Mr. Bandas other than what's shown in this
15 document?

16 A No.

17 Q Have you ever objected to other class action
18 settlements prior to the objection that you filed in the
19 Clearwire case?

20 A No.

21 MR. BANDAS: Wait. We don't want to leave the
22 wrong impression here. You're in the AllianceOne case.

23 THE WITNESS: But that's after. I think that's
24 after this one. Anyway --

25 MR. BANDAS: I don't know if that's before or

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1 after.

2 MR. TYCKO: I'll ask it a different way.

3 MR. BANDAS: Maybe you might want to ask ever.

4 MR. TYCKO: Yes. I'll ask that question.

5 Q (BY MR. TYCKO) Have you ever objected to a class
6 action settlement in any matter other than the Clearwire case?

7 A There's another one called AllianceOne. I think
8 that's just happening now.

9 Q You think it's what?

10 A I think it's new. I think it was after this one.

11 Q And what's the nature of the settlement in that
12 case, or what's the case about?

13 A I can't remember.

14 Q Do you remember what the case is about?

15 A I can't remember. I got notified by it as well.

16 Q Was it a product or a service that you had purchased
17 at some time?

18 A I can't remember. I'm sorry.

19 Q Do you recall when you filed that objection?

20 A I don't think it's been filed.

21 Q Do you know what court it was that was considering
22 the settlement?

23 A Hum-um. No.

24 Q And how did you decide to object in that case?

25 A I just -- when I got those things, I know that

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1 Mr. Bandas' office handles these types of matters and when I
2 got that in, I sent it along as well.

3 Q Do you have any understanding sitting here today of
4 what the substance of your objection was in the Alliance case?

5 A I'm sorry. I don't.

6 Q So Mr. Bandas represents you in that matter as well?

7 A Yes, sir.

8 Q Okay. Has he represented you in any other cases?

9 A No.

10 Q Do you have a personal view, one way or the other,
11 as to whether or not the settlement that we've entered into in
12 the Clearwire case should or shouldn't be approved?

13 MR. BANDAS: Objection. Asked and answered.
14 And are you asking him beyond what's already in his pleading,
15 or in addition to or separate from?

16 MR. TYCKO: Just asking for his personal
17 opinion.

18 Q (BY MR. TYCKO) Do you have a personal opinion or a
19 view as to whether or not the settlement that has been entered
20 into in the Clearwire case should or shouldn't be approved be
21 the Court?

22 MR. BANDAS: I'll tell you before you answer,
23 make sure you don't reveal any attorney/client communications.
24 I know counsel is not asking you for that, but just to be
25 abundantly clear, you don't want to tell him anything that we

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1 talked about. So if you can answer the question without
2 relying on those things and have a personal opinion other than
3 the pleadings and what we discussed, in addition to what
4 you've already filed with the court, I guess to the extent you
5 understand his question, you can answer it.

6 THE WITNESS: I mean, outside of what has been
7 filed by Mr. Bandas, I really don't have an opinion one way or
8 the other.

9 Q (BY MR. TYCKO) Well, if you don't -- if you don't
10 have an opinion about the settlement and you haven't read it,
11 can you just tell me why you've objected?

12 A I just rely on the advice of my counsel and let him
13 handle the legal side of it.

14 Q So you can't give me -- you can't give me a reason,
15 though?

16 A No.

17 MR. BANDAS: Objection. Asked and answered
18 several times now.

19 MR. TYCKO: If I could have that marked as
20 Exhibit 2.

21 (EXHIBIT 2 WAS MARKED.)

22 Q (BY MR. TYCKO) Mr. Morgan, I'm going to hand you
23 what we've marked as Exhibit 2 of this deposition. It's just
24 the notice to this deposition, and then attached to it is an
25 exhibit. It's the subpoena that, I believe, was served upon

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1 you and I just ask you to take a look at that. Have you seen
2 that subpoena before, Exhibit A?

3 A I think Thursday or Friday of last week it showed
4 up.

5 Q Okay. And did you notice that the subpoena asks to
6 you produce certain categories of documents?

7 MR. BANDAS: By the way, Jonathan, you may or
8 may not know this, but we filed objections with the Court
9 today.

10 THE WITNESS: Are you talking about here?

11 Q (BY MR. TYCKO) Yeah. Yeah. And by "here", the
12 witness is pointing at Exhibit A, the subpoena.

13 A It's specifically production?

14 Q Correct, yeah. So have you brought with you any
15 documents responsive to that subpoena?

16 A No. Any documents that I would have would be in the
17 hands of my lawyer.

18 MR. TYCKO: Okay. I take it you haven't
19 brought anything with you, Chris?

20 MR. BANDAS: Yeah, we -- well, I gave you the
21 fee agreement, for starters. I think most of the other things
22 are public record anyway, which I suspect you have access to.
23 Plus our objection was whether the depo was scheduled for
24 tomorrow or today and we moved it -- moved the subpoena depo
25 to today by agreement. Either way, it give us, you know, less

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1 than two business days to respond, so to the extent we come up
2 with anything that's responsive and relevant and appropriate,
3 we will produce it.

4 Q But you don't have anything else to produce today?

5 A No.

6 (EXHIBIT 3 WAS MARKED)

7 Q (BY MR. TYCKO) Mr. Morgan, I'm going to hand you
8 what's been marked as Exhibit 3 as the pleading that your
9 lawyer filed in our case titled Objection to Proposed Class
10 Settlement and Award of Attorneys' Fees and Expenses, which I
11 guess was filed on or about November 30th of this year. Have
12 you seen this document before today?

13 A No.

14 Q Let me just direct you to some of the documents that
15 are included as exhibits to this pleading. Exhibit 1 to the
16 pleading, is that a copy of the postcard notice that you
17 received?

18 A Yes.

19 Q So that was one of the documents that you reviewed?

20 A That's the document that I received telling me about
21 this class action.

22 Q Okay. And you told me that document was the only
23 document that you've read that actually describes the
24 settlement; is that right?

25 A Yes.

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1 Q Okay. And then let me show you what's Exhibit 2 to
2 the pleading. Have you ever seen that before?

3 A That's confirmation for the filing of the -- what is
4 it -- proof of claim filing; yes.

5 Q So is that a document you got back after you
6 submitted the claim?

7 A Well, it came on the screen, but yeah; you could
8 print it out. It just -- that's a verifications, I think;
9 yeah.

10 Q Okay. So when you submitted your claims forms, did
11 you do it online on the settlement website?

12 A Yes. I printed -- I think I printed it out as well,
13 but I did it online; yeah.

14 Q And this is the receipt you got back?

15 A Yes.

16 Q Did you keep a copy of your claims form?

17 A If I did, I sent it to Mr. Bandas' office.

18 Q Do you know whether you did or not?

19 A I believe I printed it out and then sent it to
20 Mr. Bandas' office.

21 Q Okay. And so this postcard notice and that claims
22 form, those are the only documents that you've looked at
23 related to the case; is that right?

24 A Yes.

25 MR. TYCKO: If I can have that marked at next

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1 exhibit. I guess it's Exhibit 4.

2 (EXHIBIT NUMBER 4 WAS MARKED.)

3 Q (BY MR. TYCKO) Let me hand you what we've marked as
4 Exhibit 4. Have you seen this document before?

5 A I want to say that I've read this, I think on the
6 e-mail.

7 Q Is that your signature that appears on the second
8 page?

9 A No, but I probably gave permission for it to be
10 signed.

11 Q So --

12 A This is the AllianceOne; yeah.

13 Q Was this the objection that was filed on your behalf
14 in the AllianceOne case?

15 A Yes, sir.

16 Q So that was the other one that you mentioned to me?

17 A Yes; it is.

18 Q And does looking at this refresh your recollection
19 at all about what the AllianceOne settlement was about?

20 A I'm just reading what this card says and it's
21 something to do with cell phone or pager calls AllianceOne was
22 using from an automated telephone dialing system but I don't
23 know anything more than that.

24 Q Were you a customer of AllianceOne?

25 A Yes, but I can't -- I don't know exactly in what --

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1 whether or not we had cell phones through them or what.

2 Q Okay. And so the first two pages of this document,
3 who drafted that?

4 A It was drafted probably by Mr. Bandas' office for
5 me.

6 Q And then you gave them permission to sign for you?

7 A Yes; I would have.

8 MR. TYCKO: I don't think I've got anymore
9 questions for you. Thanks for coming down.

10 THE WITNESS: Thank you, sir.

11 MR. TYCKO: One second. Do you have any
12 questions from the phone?

13 MR. GOLDMARK: Yeah. Sure. Let me -- just a
14 couple of quick follow-up questions.

15 E X A M I N A T I O N

16 BY MR. GOLDMARK:

17 Q Mr. Morgan, you mentioned your subscription to
18 Clearwire. Do you remember more specifically when you signed
19 up?

20 A No. I'm sorry. I don't.

21 Q And who signed up for Clearwire? Was it you or your
22 business?

23 A It would have been my business.

24 Q And what's your business's name?

25 A At that time, it was -- Currently, my business is

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1 called Texas International Trailer Sales. That's current, but
2 that wouldn't have been the same and I'm trying to think back
3 to the timeframe. It had to be somewhere around 2006, 2007,
4 2008; right in there somewhere, and that would have been --
5 because I've had several different companies, but it probably
6 would have been Canales, Morgan Law Office.

7 Q I'm sorry. What was that name? I couldn't quite
8 hear you.

9 A Canales, Morgan Law Office, but it could have been
10 different. We had several different changes over the last few
11 years.

12 Q And what did -- what was that business?

13 A It was a law office.

14 Q And did you operate it?

15 A Yes.

16 Q In what capacity?

17 A As a lawyer.

18 Q And what kind of practice did you practice with
19 Canales, Morgan Law Office?

20 A It just -- it was a general practice; nothing
21 specific.

22 Q Could you give me some examples of the types of
23 cases you worked on?

24 A Immigration law, criminal law, personal injury law,
25 family law, and whatever else came through the door.

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1 Q Fair enough. And when did you start that practice?

2 A My practice started in 1989.

3 Q And the name of the practice -- Am I pronouncing it
4 right? Canales, Morgan Law Office?

5 A At the time of the Clearwire, yeah; it was Canales,
6 Morgan. Could have been Morgan Law Office. My recollection
7 is it was Canales, Morgan, but I can't remember.

8 MR. TYCKO: How do you spell Canales?

9 Q (BY MR. GOLDMARK) Okay. And where was that
10 located?

11 A We were located at a couple of different areas, but
12 719 North Upper Broadway.

13 Q That would have -- would that have been the location
14 when you signed up for Clearwire?

15 A Probably.

16 Q And I'm sorry. I'm not familiar with the area. Is
17 this 719 North Upper Broadway, is that in Corpus Christi?

18 A Yes, sir.

19 Q And you mentioned that your Clearwire service, you
20 changed it when you moved. So what happened? Was this when
21 you moved away from 719 North Upper Broadway?

22 A Yes. Yeah. We -- I don't know if we got rid of it
23 immediately, but we -- I know we got rid -- We were having a
24 lot of trouble with it.

25 Q And where did you move to?

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1 A Don't remember the exact address on Buffalo Street.
2 We moved from 719 North Upper Broadway to Buffalo Street but I
3 don't remember the street number.

4 Q And that was still the law office then that was --
5 that had moved?

6 A Yes.

7 Q What kind of Clearwire service did the law office
8 subscribe to?

9 A It would have been phones and Internet.

10 Q Do you recall what the speed of the plan was that
11 you signed up for?

12 A No. I'm sorry.

13 Q And who would have signed it. Would it have been
14 you?

15 A Probably.

16 Q How did you hear about Clearwire?

17 A It was a -- There was a lot of activity about
18 Clearwire back then and a lot of advertisement, a lot of
19 information concerning the quality and speed of the service.
20 And I think we had some person that was selling it come to the
21 office and we agreed to switch over.

22 Q And what was the information concerning the quality
23 and speed of service?

24 A It's just general, you know. This is new a deal.
25 This is fast, it's good, it's the -- you know, a good quality

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1 type of service for offices and so forth, but I don't remember
2 any real specifics. It was just a general push towards their
3 type of product.

4 Q And what -- when you said someone came to the office
5 and told you about Clearwire, what was your Internet carrier
6 at the time?

7 A I can't -- I can't honestly -- I cannot remember.
8 It was -- I'm just guessing. It would have been Southwestern
9 Bell; something like that, but I can't remember.

10 Q And when did you move locations, because it sounds
11 like that roughly approximates when you changed providers?

12 A I don't remember the exact date. I can't remember
13 the dates.

14 COURT REPORTER: Can you hold on for a second,
15 please?

16 (SHORT PAUSE.)

17 Q (BY MR. GOLDMARK) Mr. Morgan, what about just a
18 year? Can you remember which year you would have moved and
19 changed service?

20 A I want to say 2008, but I mean, it could have been
21 2007.

22 Q Let's turn into -- you mentioned some issues with
23 the Clearwire's Internet. Can you describe what those issues
24 were?

25 A Yeah. I think it's -- my secretaries at the time

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1 were complaining -- from what I recall, that they were
2 complaining about the -- either the speed of the Internet or
3 that the Internet itself was -- it was -- I don't know what
4 the term is. It would just stop. But I remembered that they
5 were very unhappy with it.

6 Q And did you or someone in your office contact
7 Clearwire to address that issues or to bring that issue to
8 light?

9 A Yes. I remember -- Yes; I remember them getting
10 involved and trying to rectify the situation, but I don't
11 think it ever changed anything.

12 Q Did you contact Clearwire?

13 A I can't remember if it was me or if it was one of
14 the secretaries. We had a lady that was kind of running the
15 office at that time and it very well could have been her.

16 Q I think you mentioned -- you mentioned a fee that --
17 when you changed that Clearwire I think you said tried to
18 charge but you didn't pay; is that right?

19 A Yeah. I seem to recall them wanting -- it was like
20 for breaking the contract.

21 Q And how did you -- how did that come to light?

22 A I think they made a demand for payment.

23 Q And what did you do?

24 A Told them I wasn't going to pay anything.

25 Q And it sounds like you didn't pay anything; is that

1 right?

2 A That's right.

3 Q Did you ever request a refund related to any
4 problems with your Internet connectivity?

5 A I don't recall. Like I said, we had a lady that was
6 like an office manager at the time and she may have, but I
7 don't recall.

8 MR. GOLDMARK: Thank you, Mr. Morgan. That's
9 all the questions I have.

10 THE WITNESS: Yes, sir.

11 F U R T H E R E X A M I N A T I O N

12 BY MR. TYCKO:

13 Q Just a couple more because I didn't realize that you
14 were a lawyer by background. Are you still practicing law
15 now?

16 A No.

17 Q When did you get out of the practice of law?

18 A In April of this year.

19 Q April 2012?

20 A Yes.

21 Q And is that when you started the other business that
22 you have?

23 A I actually started the other business several months
24 before.

25 Q And what's the nature of the business you have now?

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1 A It's an oil and gas field-related utility trailer
2 sales company. We thinking about two oil tankers. Not the
3 truck part, but the tanker part, sand carriers, vacuum
4 trailers. There's a big oil play here. I don't know if
5 you're familiar, but there's --

6 Q I've heard oil and taxes going together.

7 A We have a real, big -- very close to Corpus is a big
8 oil and gas plain, so there's a lot of activity there right
9 now.

10 Q So it's supplying equipment for the --

11 A Exactly.

12 Q -- people who work in those fields?

13 A Yes, sir.

14 Q And have you kept your law practice going at all on
15 the side or --

16 A No.

17 Q -- are you totally out of it?

18 A I'm out of it.

19 Q And why did you decide to make that switch?

20 A I resigned.

21 Q Resigned from the bar, you mean totally?

22 A Yes, sir.

23 Q Okay. Why did you resign your bar commission?

24 A Well, I had a conflict with the State Bar. Had been
25 going on for a few years and I finally just got tired of

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1 dealing with them.

2 Q What was the nature of the conflict?

3 A It was over an automobile accident case and whether
4 or not third party medical care providers had been paid
5 timely. Not that they hadn't been paid, but had they been
6 paid timely.

7 Q And that just related to a particular case; one
8 case?

9 A Yes.

10 Q Was that ever resolved one way or the other?

11 A It was -- They had been paid. It was just whether
12 or not it was paid timely was the big -- a giant issue for the
13 Bar here, so after about three years of dealing with that, I
14 said enough's enough.

15 Q And did your resignation effectively resolve the
16 issue before --

17 A I had already paid. Yeah; there was no issue. The
18 answer to your question is yes, because there was no further
19 interaction between myself and the Bar.

20 MR. TYCKO: Okay. I don't have anything else.
21 Thank you.

22 MR. BANDAS: Let's take a short break.

23

24 (END OF DEPOSITION.)

25

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Page 29

1 CHANGES AND SIGNATURE
2 TO THE ORAL DEPOSITION OF
3 GORDON MORGAN
4
5 Volume 1 of 1

6	PAGE	LINE	CHANGE	REASON
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Page 30

1 I, GORDON MORGAN, have read the foregoing deposition
2 and hereby affix my signature that same is true and correct,
3 except as noted above.

4

5

6

GORDON MORGAN

7

8 I, GORDON MORGAN, have read the foregoing deposition
9 and hereby affix my signature that same is true and correct,
10 except as noted above.

11

12

13

GORDON MORGAN

14

15

16 STATE OF _____)

17 COUNTY OF _____)

18 Before me, _____, on this
day personally appeared GORDON MORGAN, known to me (or proved
to me under oath or through _____ (description of
identity card or other document) to be the person whose name
is subscribed to the foregoing instrument and acknowledged to
me that they executed the same for the purposes and
consideration therein expressed.

19
20 (Seal) Given under my hand and seal of office this
21 _____ day of _____, _____.

22 _____
23 Notary Public in and for the
24 State of _____

25

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Page 31

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

5 MICHAEL BOBOWSKI, ALYSON BURN,) CASE NO. C-10-1859 JLR
6 STEVEN COCKAYNE, BRIAN)
7 CRAWFORD, DAN DAZELL, ANGELO)
8 DENNINGS, CHEYENNE FEGAN,)
9 SHARON FLOYD, GRERY GUERRIER,)
10 JOHANNA KOSKINEN, ELENA MUÑOZ-)
11 ALAZAZI, ELAIN POWELL, ROBERT)
12 PRIOR, ALIA TSANG, AND KYLE)
13 WILLIAMS, on behalf of)
14 themselves and all others)
15 similarly situated,)
16 Plaintiffs)
17)
18 v.)
19)
20 CLEARWIRE CORPORATION,)
21 Defendant)

14 ORAL DEPOSITION OF
15 GORDON MORGAN
16 Volume 1 of 1
17 December 17, 2012

17 I, Sylvia D. Trevino, Certified Shorthand Reporter
18 in and for the State of Texas, hereby certify to the
19 following:

20 That the witness, GORDON MORGAN, was duly sworn by
21 the officer and that the transcript of the oral deposition is
22 a true record of the testimony given by the witness;

23 That the deposition transcript was submitted on
24 December 18, 2012, to the witness or to the attorney for the
25 witness for examination, signature and return to Sylvia D.

G. MORGAN

Page 32

1 Trevino by January 17, 2013;

2 That the amount of time used by each party at the
3 deposition is as follows:

4 Johnathan Tycko - (0:12)

5 John Goldmark - (0:02)

6 That pursuant to information given to the deposition
7 officer at the time said testimony was taken, the following
8 includes counsel for all parties of record:

9 ATTORNEY FOR THE PLAINTIFFS, GORDON MORGAN & JEREMY DE LA
GARZA

10

11 Christopher Bandas

12 THE BANDAS LAW FIRM

13 500 N. Shoreline, Ste. 1020

14 Corpus Christi, Tx 78401-0353

15 (361) 698-5200

16

17 CLASS ACTION ATTORNEY:

18 Johnathan K. Tycko

19 TYCKO & ZAVAREEI

20 2000 L. St. N.W. Ste. 808

21 Washington, D.C. 20036

22 (202) 973-0900

23 fax (202) 973-0950

24 jtycko@tzlegal.com

25 ATTORNEY FOR DEFENDANT, CLEARWIRE CORPORATION:

(Telephonically)

26

27 John Goldmark

28 DAVIS, WRIGHT, TREMAINE

29 1201 Third Avenue

30 Seattle, Washington 98101

31 Tel: (206) 757-8068

32 johngoldmark@dwt.com

33

34

35

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1 I further certify that I am neither counsel for,
2 related to, nor employed by any of the parties or attorneys in
3 the action in which this proceeding was taken, and further
4 that I am not financially or otherwise interested in the
5 outcome of the action.

6 Further certification requirements pursuant to Rule
7 203 of TRCP will be certified to after they have occurred.

8 Certified to by me on December 18, 2012.

9
10 
11 Sylvia D. Trevino, CSR 2733

12 Expiration Date: 12/31/12
13 U.S. Legal Support
14 Firm Registration No. 343
15 5910 N. Central Expressway, Ste. 100
16 (214) 741-6001 - (214) 741-6824 (f)

17 Job No. 136957

18 - - -

19 FURTHER CERTIFICATION UNDER RULE 203 TRCP

20 The original deposition was/was not returned to the
21 deposition officer on _____;

22 If returned, the attached Changes and Signature page
23 contains any changes and the reasons therefor;

24 If returned, the original deposition was delivered
25 to _____, Custodial Attorney;

26 That \$ _____ is the deposition officer's charges to
27 the PLAINTIFF for preparing the original deposition transcript

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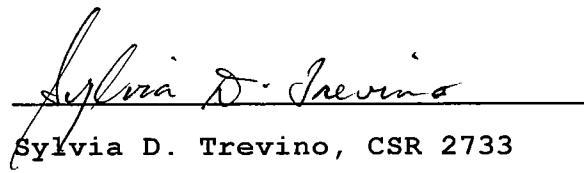
G. MORGAN

Page 34

1 and any copies of exhibits;

2 That the deposition was delivered in accordance with
3 Rule 203.3, and that a copy of this certificate was served on
4 all parties shown herein and filed with the Clerk.

5 Certified to by me this 20th day of December,
6 2012.

7 
8 Sylvia D. Trevino

Sylvia D. Trevino, CSR 2733

Expiration Date: 12/31/12

9 U.S. Legal Support

Firm Registration No. 343

10 5910 N. Central Expressway, Ste. 100
11 (214) 741-6000 (214) 714-6824 (f)

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[& - behalf]

Page 1

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

5 MICHAEL BOBOWSKI, ALYSON BURN,) CASE NO. C-10-1859 JLR
6 STEVEN COCKAYNE, BRIAN)
7 CRAWFORD, DAN DAZELL, ANGELO)
8 DENNINGS, CHEYENNE FEGAN,)
9 SHARON FLOYD, GREGORY GUERRIER)
10 JOHANNA KOSKINEN, ELENA MUÑOZ-)
11 ALAZAZI, ELAINE POWELL, ROBERT)
12 PRIOR, ALIA TSANG, AND KYLE)
13 WILLIAMS, on behalf of)
14 themselves and all others)
15 similarly situated,)
16 Plaintiffs)
17)
18 v.)
19)
20 CLEARWIRE CORPORATION,)
21 Defendant)

ORAL DEPOSITION OF
JEREMY DE LA GARZA
Volume 1 of 1
December 17, 2012

17 ORAL DEPOSITION OF JEREMY DE LA GARZA, produced as a
18 witness at the instance of the PLAINTIFF, and duly sworn, was
19 taken in the above-styled and numbered cause on December 17,
20 2012 from 1:48 P.M. to 2:18 P.M., before Sylvia D. Trevino,
21 CSR No. 2733 in and for the State of Texas, reported by
22 Stenographic method, at the offices of U.S. Legal Support, 802
23 N. Carancahua, Corpus Christi, Texas, pursuant to the Federal
24 Rules of Civil Procedure, Notice and any provisions stated on
25 the record.

J. DE LA GARZA

Page 2

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2

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J. DE LA GARZA

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J. DE LA GARZA

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1 JEREMY DE LA GARZA,

2 having been first duly sworn, testified as follows:

3 E X A M I N A T I O N

4 BY MR. TYCKO:

5 Q Could you state your full name and your address for
6 the record?

7 A My name is Jeremy Brandon De La Garza. My address
8 is 5334 Everhart Road, Suite 203, Corpus Christi, Texas 78411.

9 Q And how are you currently employed?

10 A I'm self-employed.

11 Q What kind of work do you do?

12 A I own a real estate company and am a realtor in the
13 State of Texas.

14 Q When you say a real estate company, what does that
15 mean?

16 A Real estate company. Remax, Century 21, for
17 instance. Real estate company.

18 Q Do you do anything -- do you act as real estate
19 agent for people?

20 MR. BANDAS: Hold on a second. Were you
21 finished giving your answer before he cut you off?

22 THE WITNESS: Yeah.

23 Q (BY MR. TYCKO) Just trying to understand what you
24 do. So you're a real estate agent; is that right?

25 A Real estate agent.

J. DE LA GARZA

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1 Q For how long have you been a real estate agent?

2 A Approximately 12 years.

3 Q Now, were you a Clearwire customer at some point in
4 time?

5 A Yes; I was.

6 Q Do you recall when you first became a Clearwire
7 customer?

8 A No; I do not.

9 Q Did you -- do you recall what you used Clearwire
10 for; what type of service?

11 A Internet service.

12 Q And was that for your business or your home?

13 A Both.

14 Q Did you have two separate subscriptions or one
15 subscription that you used in both location?

16 A One subscription. And at one point, I had the
17 mobile and the home based for tower and the USB is what I had
18 at one time.

19 Q And for how long a period of time did you use
20 Clearwire?

21 A Between maybe three and five years. I'm not sure
22 when I started with them.

23 Q Do you recall approximately when you stopped using
24 Clearwire?

25 A I stopped using Clearwire maybe earlier this year

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1 at -- for work because the service was just unreliable, in my
2 opinion.

3 Q So did you cancel your subscription at that time?

4 A I canceled the mobile. I canceled the two lines and
5 went with one just at my house.

6 Q So do you still use Clearwire at your house?

7 A At the present time, we do have Clearwire at our
8 residence.

9 Q So did you -- what was it then that you canceled?

10 A We had Clearwire also at our office and it just --
11 half the time when the agents went in there, the Internet was
12 down and it was just, again, unreliable and it affected our
13 business.

14 Q And so you canceled the office subscription earlier
15 this year; is that what you said?

16 A Yes. We had the USB Donegal and the box, I guess
17 you can say, the modem, and yes, so I canceled those and just
18 switched to one modem, which they said would -- is newer is
19 what they say.

20 Q And that newer modem, you're using at your
21 residence?

22 A Yes; we're using it at the residence right now.

23 Q So for how long a period of time did you use
24 Clearwire at your office?

25 A About a year; about. Approximately a year. I'm not

1 positive on that, but approximately a year maybe.

2 Q And were you having troubles with it that whole
3 time?

4 A For the most part.

5 Q Could you just describe to me what the issues were
6 that you had with the Clearwire service at your office?

7 A Yes. I recall several times walking in and seeing
8 the Clearwire modem with the blinking dots going up and down,
9 which by calling the support desk, indicated no service with
10 them, and sometimes they were able to, I guess maybe send a
11 refresh or something. Sometimes it worked; sometimes it
12 didn't.

13 Q Where is your office located?

14 A 5334 Everhart Road, Suite 203. The address I gave
15 you.

16 Q And where is your home?

17 A 6230 Brockhampton Drive, Corpus Christi, Texas
18 74814.

19 Q Did you ever pay an early termination fee to
20 Clearwire?

21 A No.

22 Q Did you ever seek any sort of refund from Clearwire
23 as a result of the problems you had with the service?

24 A Not that I can recall.

25 Q Did you ever bring a lawsuit or a legal claim

1 against Clearwire?

2 A No, sir.

3 Q And how did you find out about the settlement that
4 brings us here today?

5 A I was e-mailed with it.

6 Q That was an e-mail you got from Clearwire or from
7 the settlement administrator?

8 A Yes.

9 Q And what did you do after you received that e-mail?

10 A I contacted the Bandas law firm.

11 Q Did you read the e-mail when you got it?

12 A I glanced over the header and that was about it.

13 Q Did you do anything to familiarize yourself with the
14 terms of the settlement?

15 A No. I contacted my attorney at that time and relied
16 on his advice.

17 Q Had you used Mr. Bandas as your attorney in other
18 matters?

19 A One other time, yes; I have.

20 Q And what type of matter was that?

21 A That was a Nokia settlement.

22 Q Was that also a matter in which you filed an
23 objection?

24 A Yes; it was.

25 Q Do you recall what the Nokia settlement was about?

1 MR. BANDAS: Are you asking the underlying
2 case?

3 MR. TYCKO: Yeah.

4 Q (BY MR. TYCKO) What the issue was in that case?

5 A I don't know. Something with the cell phone
6 quality, I believe, of a cell phone.

7 Q And did you own a Nokia cell phone at some point?

8 A Yes; I did.

9 Q Do you recall when it was that you filed your
10 objection to that settlement?

11 A No; I don't.

12 Q Was it within the last couple of years?

13 A Within the last couple of years; yes.

14 Q Do you recall what court that was in?

15 A No, sir; I do not.

16 Q Do you recall what the substance of your objections
17 were?

18 A No; I do not.

19 Q Do you recall that there was some problem with the
20 settlement that you were objecting to?

21 A No; I do not.

Q Do you know what the results of your objections was?

23 MR. BANDAS: At this point, I'm going to
24 instruct the witness not to answer. The result was a
25 privileged and confidential settlement, the terms of which

1 cannot be revealed.

2 Q (BY MR. TYCKO) Were you paid money as a result of
3 that settlement?

4 MR. BANDAS: Don't answer any questions
5 regarding settlement because it's privileged and confidential.

6 MR. TYCKO: Was the settlement agreement itself
7 subject to confidentiality, because the terms of the
8 settlement wouldn't be privileged.

9 MR. BANDAS: I'm not the witness. I instructed
10 my client and --

11 MR. TYCKO: I'm trying to understand the basis
12 for your objection.

13 MR. BANDAS: It's not an objection. It's an
14 instruction. I told him not to answer the question.

15 MR. TYCKO: Well, how is the terms of the
16 settlement covered by attorney/client privilege?

17 MR. BANDAS: You can ask your next question.
18 I'm not going to --

19 MR. TYCKO: Well, I'm trying to understand the
20 basis for your instruction because I don't think it's a proper
21 instruction, unless there's actually something covered by
22 attorney/client privilege.

23 MR. BANDAS: File your motion; do what you got
24 to do. I instructed the witness not to answer because it's a
25 privileged and confidential settlement; okay?

1 MR. TYCKO: That's what I'm trying to
2 understand. Are you saying that the terms of the settlement
3 itself are confidential.

4 MR. BANDAS: I'm going to take it, if you ask
5 me that question again, that you have no other questions for
6 this witness and we'll be done.

7 MR. TYCKO: You can take whatever position you
8 want but I'm entitled to ask you to explain the basis for your
9 objection; okay? Because if I am going to file a motion, I'd
10 like there to be a record so that I understand what your
11 position is.

12 MR. BANDAS: It's on the record. You can read
13 it when you get a copy of the transcript.

14 Q (BY MR. TYCKO) Okay. Did you sign a settlement
15 agreement with somebody as a result of the objection that you
16 filed in the Nokia case?

17 MR. BANDAS: Don't answer any questions
18 regarding settlement in that case.

19 Q (BY MR. TYCKO) Are you going to follow your
20 lawyer's instruction?

21 A Yes; I'm going to follow my attorney's instructions
22 at this point as far as any other questions with that goes.

23 Q Do you know if the Court in the Nokia case ever
24 ruled on the substance of your objection?

25 A No; I do not.

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1 Q Now, other than the Nokia matter, had you ever filed
2 an objection in any other class lawsuit?

3 A No; I had not.

4 Q And had you ever used Mr. Bandas as your attorney in
5 any other matter?

6 A No; I had not.

7 Q Let's go back to the time that you got the e-mail
8 notice relating to the settlement in the Clearwire case. Did
9 you at that point in time do anything to familiarize yourself
10 with the terms of the settlement?

11 A No; I did not.

12 Q Do you know anything about the terms of the
13 settlement sitting here today?

14 A No; I do not.

15 Q Is there something about the settlement that you
16 would change to make it better?

17 A I don't know about the settlement. As far as I rely
18 on my attorney's advice for what I'm -- for the settlement.

19 Q Is there something about the settlement that you're
20 dissatisfied with?

21 MR. BANDAS: Objection. Asked and answered.

22 Just answered that question.

23 THE WITNESS: Going to rely on my attorney's
24 advice for how I proceed with this.

25 Q (BY MR. TYCKO) Well, just -- can you tell me in

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1 your own words is there something about the settlement that
2 you think should be changed or that you're dissatisfied with?

3 MR. BANDAS: He just told you in his own words
4 so asking it a second time for his own words in a different
5 way isn't going to work.

6 Q (BY MR. TYCKO) Can you answer the question?

7 A I'm going to follow my attorney's advice on this --

8 Q He hasn't told you not to answer.

9 MR. BANDAS: He given you an answer before,
10 which was --

11 MR. TYCKO: That's a leading instruction,
12 Chris.

13 MR. BANDAS: -- and you're harassing
14 the witness with the same question.

15 MR. TYCKO: I'm not harassing the witness.
16 You're interfering with my examination, Mr. Bandas.

17 MR. BANDAS: No, no, no. When you ask the same
18 question over and over and over again hoping to get a
19 different answer, that's called harassment, and I'm simply
20 putting it on the record.

21 THE WITNESS: The same answer for that
22 question.

23 Q (By MR. TYCKO) Okay. So your answer is you're not
24 able to tell me anything that you find problematic with the
25 settlement; is that right?

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1 A No.

2 MR. BANDAS: Okay. Wait. Time out. You
3 changed the question before --

4 MR. TYCKO: Okay. Let me ask -- Withdrawn.
5 Withdrawn.

6 Q (BY MR. TYCKO) Is there anything about the
7 settlement that you can tell me sitting here today that you
8 find objectionable?

9 MR. BANDAS: Other than what he's already filed
10 in the pleadings, or are you asking him personally or are you
11 asking him to refer to the pleadings?

12 MR. TYCKO: Personally.

13 MR. BANDAS: Okay. Jeremy, before you answer
14 this, be careful not to reveal any communications between you
15 and me. So you can answer his question and offer a personal
16 opinion without disclosing what you and I talked about. You
17 can tell him that you have a personal opinion. You don't have
18 to have one, but you can one. And if you have one, tell him
19 what it is.

20 THE WITNESS: Could you repeat the question,
21 please?

22 Q (BY MR. TYCKO) Yes. Do you have a personal opinion
23 about whether there is something in the settlement that you
24 found objectionable?

25 MR. BANDAS: Subject to the same objections, go

1 ahead and answer.

2 THE WITNESS: Attorneys getting paid quite a
3 bit of money on it.

4 Q (BY MR. TYCKO) Okay. The attorneys representing
5 who?

6 A The class action lawsuit.

7 Q Okay. And what do you know about how much the
8 attorneys are getting paid?

9 A Just that it's a lot. I don't. I just --

10 Q Do you know?

11 A I don't know.

12 Q Do you know how much the attorneys are getting paid?

13 A No.

14 Q So how do you know it's too much?

15 MR. BANDAS: You asked him for personal
16 opinion. If you have a basis --

17 THE WITNESS: Just based on -- seems like what
18 the attorneys get paid on a class action lawsuit, they get
19 paid a lot.

20 Q (BY MR. TYCKO) Just generally?

21 A Generally; yes. Not specifically. That is my
22 personal opinion answering your question.

23 Q So other than -- other than what the attorneys are
24 getting paid, do you have any other personal opinions about
25 the settlement?

1 A I don't know much about it.

2 MR. BANDAS: Okay. Just to be clear, you're
3 not asking him to tell you what's in his pleadings. Just
4 personal opinions separate and apart from what's in the
5 pleadings. Is that what you're asking?

6 MR. TYCKO: Yes.

7 THE WITNESS: No; I don't.

8 Q (BY MR. TYCKO) Did you file a claim in the
9 Clearwire settlement?

10 A Yes; I did.

11 Q And do you recall when you did that?

12 A No; I do not.

13 Q Do you recall how you did it?

14 A Electronically.

15 Q Was that through the settlement website?

16 A I believe so; yes. Online. As best I can say.

17 Q Have you ever seen the actual settlement
18 agreement?

19 A That's the 60-page document you said from sitting in
20 here prior to -- I'm guessing, no; I did not look at 60 pages
21 of a settlement agreement.

22 Q Let me just show it to you and you can tell me if
23 you've ever seen this document before. I'm handing the
24 witness the settlement agreement and release of claims in the
25 Clearwire case. Have you seen this document before?

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1 A I don't know if I saw the top of it or if I didn't
2 see the top of it. If I did, I did not read all 60 pages of
3 it. If I did see it, it -- maybe this was on the first page
4 of that e-mail you all sent. I'm not sure. I don't know. So
5 that's the best, most honest answer I can give you.

6 Q Okay. Fair enough. So you don't recall reading
7 anything outside of the e-mail; is that right?

8 A I don't know on that.

9 Q Well, do you -- are there other documents relating
10 to this case that you read other than the e-mail notice that
11 you received and the claims form that you prepared?

12 A No. That's all, I believe.

13 Q Let me hand you what's been marked as Exhibit 1 of
14 this deposition. Have you seen this document before?

15 A Yes; I have.

16 Q And is that an agreement that you entered into with
17 Mr. Bandas' law firm?

18 A Appears to be; yes.

19 Q Is that your signature that appears on the last
20 page?

21 A Last page is my signature.

22 Q Do you recall when you entered into that
23 agreement?

24 A No. I mean, I recall going over it. I don't know
25 the day. I don't know -- I know it was midday one day, but

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1 that's about as best as I can tell you.

2 Q Within the last week, two weeks?

3 A Within the last month, I can tell you.

4 Q Within the last month? Sure. And other than that
5 document that we've marked as Exhibit 1, do you have any other
6 agreement with Mr. Bandas or his law firm relating to this
7 case?

8 A No, sir.

9 (EXHIBIT 2 WAS MARKED)

10 Q (BY MR. TYCKO) Let me hand you what's been marked
11 as Exhibit 2. This is the notice of today's deposition. And
12 I'd ask that you look at Exhibit A, that notice, which is the
13 subpoena that I believe was served on you last week. Do you
14 recall getting that subpoena?

15 A Sure do. I believe it was Thursday, last Thursday
16 maybe.

17 Q And do you have any documents to produce today
18 pursuant to that subpoena?

19 A No. I mean, with the short notice, I don't even
20 know if I'd have any documents I could provide.

21 MR. TYCKO: Okay. I don't have any other
22 questions for you. Thanks a lot.

23 THE WITNESS: Yes, sir. Thank you.

24 COURT REPORTER: Mr. Goldmark, do you have any
25 questions? MR. GOLDMARK: Yes; just a few follow-up

1 | questions.

E X A M I N A T I O N

3 BY MR. GOLDMARK:

4 Q Mr. De La Garza, you're currently a Clearwire
5 customer; is that right?

6 A Yes. Yes; I am a Clearwire. Same thing; correct?

7 Q Yes. That's right.

8 A Okay. Yes.

9 Q You mentioned you used Clearwire at your office.
10 Can you just tell me a little bit about the sequence of
11 events?

12 A By sequence of events --

13 MR. BANDAS: I'm just going to object as vague
14 and ambiguous, but if you want to repeat what you answered in
15 detail previously, you can.

16 Q (BY MR. GOLDMARK) When did you first get Internet
17 at your office through Clearwire?

18 A When I moved into my office, I had Clearwire from my
19 previous office and we switched it to -- we moved it over when
20 we moved

21 Q And roughly, you think this is sometime in 2008?

22 A No. I think it may have -- I don't remember when I
23 moved into the office, but, no. I think it was a little bit
24 after 2008 maybe but I'm not positive on that

25 O And was this -- was it a separate account from your

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1 account -- your Clearwire account you had at your home?

2 A No. Again, I had two -- I had the mobile and I had
3 a -- I had a modem with you-all, with Clear.

4 Q And they were under the same account; is that what
5 you're saying?

6 A Yes. You-all had a two-for-one price deal, I think;
7 the promotion you-all had, or that Clear had. Excuse me.

8 Q And do you recall when you signed up for that
9 promotion?

10 A No; I do not.

11 Q Do you know why you chose Clear?

12 A There was a big promotion down here in South Texas
13 and that's -- I mean, they were on the radio, you know, and
14 advertising, you know, all types of great service and stuff
15 and so I gave them a shot.

16 Q And to my understanding, you're still giving them a
17 shot; right?

18 A I have that at my house because we do not have cable
19 at my house and that -- and it would cost too much to run all
20 my lines.

21 Q Do you have any issues with the Clearwire service at
22 your home?

23 A It's still hit and miss, but I have to have
24 something and, you know, it's somewhat my last resort
25 unless -- you know, that's the way I look at it right now.

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1 And that's, you know, my opinion on it.

2 Q And why is it your last resort?

3 A Just it -- the cable lines at my house are all
4 screwed up and they want to -- they want like \$800 to run new
5 cable lines to my house, so I just thought that was excessive
6 and, you know, that's the reason I don't have hard-wired cable
7 such as Roadrunner at my house.

8 Q So Clearwire or Clear costs less than cable?

9 A No. They don't have lines is why I use them. Not
10 that it costs less or anything to do monetary-wise. I just --
11 I don't have the lines in place currently to go with AT&T or
12 Grande, which serves our area. At my office, I have switched
13 to another provider that provides reliable service to my
14 office now.

15 Q What provider is that?

16 A We switched to AT&T.

17 Q And why can't you do that at home?

18 A As I stated previously, the cable lines going from
19 the box that they ran the cable to my house do not exist and
20 they want to charge me to run those lines.

21 Q So I guess going back to my earlier question, it
22 would cost more to switch over than it's worth it to stay with
23 Clearwire?

24 A Not necessarily. I'm not set up for that at my
25 house. If I was, I would probably have them right now at my

1 house as well; AT&T.

2 Q And what about -- what were the issues with your
3 service at your office with Clearwire?

4 A What was it previously, the issues I had?

5 Q Yeah.

6 A Okay. Half the time when I'd do in there, the modem
7 would be lit up going up and down. And we'd either have to
8 unplug the modem, wait to see if it would, you know, refresh
9 or we'd have to call customer service to see if they could do
10 something, and it became more of an issue than it was worth.
11 And some of my agents that worked at the office didn't know
12 what to do or they weren't knowledgeable on how to reset it,
13 so it ended up affecting my business in a negative way and I
14 decided to go another route.

15 Q Did you ever call and seek a refund from Clearwire
16 for any problems with your service?

17 A No, sir; I did not.

18 Q Did you ever call and submit a claim or a complaint
19 or anything of that nature to Clearwire?

20 A No, sir. I just sought the help of the customer
21 service to try to fix it and sometimes it worked; sometimes it
22 did not.

23 Q You stated earlier you weren't charged any early
24 termination fee when you canceled your office subscription; is
25 that right?

J. DE LA GARZA

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1 A Correct. I was not charged an early termination fee
2 because I don't believe -- I'm not sure if I terminated the
3 plan or if it was switched, but it may have been terminated
4 under that and signed up -- it was -- the first line was under
5 my name and I don't know if I canceled the first service and
6 just signed up with the new one. I'm not positive on that so
7 I don't know if my current account is the same as the old
8 account I had.

9 Q Are you currently under a contract with Clearwire?

10 A I'm not sure.

11 MR. GOLDMARK: That's all the questions I
12 have. Thanks a lot.

13 THE WITNESS: Yes, sir. Thank you. Have a
14 great day.

15 MR. TYCKO: Off the record.

16 (DEPOSITION CONCLUDED AT 2:18 P.M.)

J. DE LA GARZA

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1 CHANGES AND SIGNATURE

2 TO THE ORAL DEPOSITION OF

3 JEREMY DE LA GARZA

4 Volume 1 of 1

5 PAGE LINE CHANGE REASON

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1 I, JEREMY DE LA GARZA, have read the foregoing
2 deposition and hereby affix my signature that same is true and
3 correct, except as noted above.

4

5

6 JEREMY DE LA GARZA

7

8 I, JEREMY DE LA GARZA, have read the foregoing
9 deposition and hereby affix my signature that same is true and
10 correct, except as noted above.

11

12

13 JEREMY DE LA GARZA

14

15

16 STATE OF _____)

17 COUNTY OF _____)

18 Before me, _____, on this
day personally appeared JEREMY DE LA GARZA, known to me (or
proved to me under oath or through _____
(description of identity card or other document) to be the
19 person whose name is subscribed to the foregoing instrument
and acknowledged to me that they executed the same for the
20 purposes and consideration therein expressed.

21 (Seal) Given under my hand and seal of office this
22 _____ day of _____, _____.

23

24

Notary Public in and for the
State of _____

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J. DE LA GARZA

Page 26

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

5 MICHAEL BOBOWSKI, ALYSON BURN,) CASE NO. C-10-1859 JLR
6 STEVEN COCKAYNE, BRIAN)
7 CRAWFORD, DAN DAZELL, ANGELO)
8 DENNINGS, CHEYENNE FEGAN,)
9 SHARON FLOYD, GRERY GUERRIER,)
10 JOHANNA KOSKINEN, ELENA MUÑOZ-)
11 ALAZAZI, ELAIN POWELL, ROBERT)
12 PRIOR, ALIA TSANG, AND KYLE)
13 WILLIAMS, on behalf of)
14 themselves and all others)
15 similarly situated,)
16 Plaintiffs)
17)
18 v.)
19)
20 CLEARWIRE CORPORATION,)
21 Defendant)

ORAL DEPOSITION OF

JEREMY DE LA GARZA

Volume 1 of 1

December 17, 2012

17 I, Sylvia D. Trevino, Certified Shorthand Reporter
18 in and for the State of Texas, hereby certify to the
19 following:

20 That the witness, JEREMY DE LA GARZA, was duly sworn
21 by the officer and that the transcript of the oral deposition
22 is a true record of the testimony given by the witness:

23 That the deposition transcript was submitted on
24 December 18, 2012, to the witness or to the attorney for the
25 witness for examination, signature and return to Sylvia D.

1 Trevino by January 17, 2013;

2 That the amount of time used by each party at the
3 deposition is as follows:

4 Johnathan Tycko - (0:22)

5 John Goldmark - (0:08)

6 That pursuant to information given to the deposition
7 officer at the time said testimony was taken, the following
8 includes counsel for all parties of record:

9 ATTORNEY FOR THE PLAINTIFFS, GORDON MORGAN & JEREMY DE LA
GARZA

10 Christopher Bandas

11 THE BANDAS LAW FIRM

12 500 N. Shoreline, Ste. 1020

13 Corpus Christi, Tx 78401-0353

(361) 698-5200

14 CLASS ACTION ATTORNEY:

15 Johnathan K. Tycko

16 TYCKO & ZAVAREEI

17 2000 L. St. N.W. Ste. 808

18 Washington, D.C. 20036

19 (202) 973-0900

20 fax (202) 973-0950

21 jtycko@tzlegal.com

22 ATTORNEY FOR DEFENDANT, CLEARWIRE CORPORATION:

23 (Telephonically)

24 John Goldmark

25 DAVIS, WRIGHT, TREMAINE

1201 Third Avenue

Seattle, Washington 98101

Tel: (206) 757-8068

johngoldmark@dwt.com

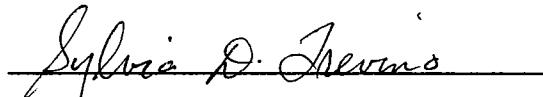
J. DE LA GARZA

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1 I further certify that I am neither counsel for,
2 related to, nor employed by any of the parties or attorneys in
3 the action in which this proceeding was taken, and further
4 that I am not financially or otherwise interested in the
5 outcome of the action.

6 Further certification requirements pursuant to Rule
7 203 of TRCP will be certified to after they have occurred.

8 Certified to by me on December 18, 2012.

9
10 
Sylvia D. Trevino

11 Sylvia D. Trevino, CSR 2733

12 Expiration Date: 12/31/12

13 U.S. Legal Support

14 Firm Registration No. 343

15 5910 N. Central Expressway, Ste. 100

16 (214) 741-6001 - (214) 741-6824 (f)

17 Job No. 136957

18 - - -

19 FURTHER CERTIFICATION UNDER RULE 203 TRCP

20 The original deposition was/was not returned to the
21 deposition officer on _____;

22 If returned, the attached Changes and Signature page
23 contains any changes and the reasons therefor;

24 If returned, the original deposition was delivered
25 to _____, Custodial Attorney;

26 That \$ _____ is the deposition officer's charges to
27 the PLAINTIFF for preparing the original deposition transcript

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J. DE LA GARZA

Page 29

1 and any copies of exhibits;

2 That the deposition was delivered in accordance with
3 Rule 203.3, and that a copy of this certificate was served on
4 all parties shown herein and filed with the Clerk.

5 Certified to by me this 20th day of December,
6 2012.

7 
8

Sylvia D. Trevino, CSR 2733

9 Expiration Date: 12/31/12

10 U.S. Legal Support

Firm Registration No. 343

11 5910 N. Central Expressway, Ste. 100

12 (214) 741-6000 (214) 714-6824 (f)

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APPENDIX E

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Re: Case No. C10-cv-1859JLR; *Michael Bobowski, et. al. v. Clearwire Corporation*

Dear Counsel:

The Court granted the earlier motion for appeal bond based on the theory that our appeal was brought in bad faith, but this is incorrect. My clients' objection is legitimate. It directly invokes the problems with your clients' settlement as addressed in *In re Bluetooth, Dennis v. Kellogg*, and similar cases. No "witch hunt" about "professional objectors" changes the merits of this objection or the shortcomings of the settlement.

So there are no further misunderstandings about my clients' intent, please accept the following proposal: *My clients will stipulate to an injunction in the trial court precluding them from withdrawing their objection or any appeal of their objection without trial court approval of the terms of any such withdrawal.*

If you or your clients are truly concerned about the possibility that the Objectors or any lawyer representing them is leveraging anyone with a meritless objection for money, rather than the possibility that their objection would be successful either in the trial court or on appeal, then you would simply agree to this stipulated injunction.

While Fed. R. Civ. Proc. 23(e)(5) precludes an objector from withdrawing his or her objection without court approval, there is no parallel provision in the Federal Rules of Appellate Procedure.

Nevertheless, please understand that my clients will stipulate to the proposed injunction, notwithstanding the fact that there is no appellate rule that requires this.

Please know that I am committed to prosecuting meritorious objections to their appellate conclusion and success, as I have done in other cases:

- In *Dennis v. Kellogg* (9th Cir. Sep. 4, 2012), I was counsel of record in a successful appeal of a court's approval of a class action settlement.
- In *In re Baby Products Antitrust Litig.*, No. 12-1165, No. 12-1166, and No. 12-1167 (3d Cir.), I was counsel of record in reversing the district court's decision.
- In *In re Online DVD Antitrust Rental Litig.*, No. 12-15705 *et al.* (9th Cir.), in which we have filed appeal and are pursuing the case to written opinion.

Please be clear that I am not seeking money for myself or for my clients to withdraw their objection in this case, and that my clients will continue to prosecute their objection on behalf of themselves with the assistance of counsel.

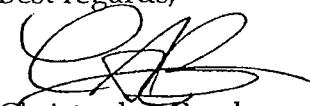
If either class counsel or defense counsel refuses this stipulation, then it will conclusively establish that neither is being disingenuous to the extent of claims of concern that I or my clients are pursuing a meritless objection.

If both class counsel and defense counsel are truly concerned about the possibility of “vexatious” intent, neither would continue to engage in expensive motion practice, but would simply agree to this stipulation.

Your stipulation to an injunction as proposed here would moot the need for any further “witch hunt” into whether the objection is “vexatious” or not. It is patently meritorious, and that cannot be further gainsaid.

Again, your refusal to stipulate to this injunction demonstrates that your fear is not of supposed motives, but of the merits of this objection and protecting a multi-million dollar fee award and unfair class action settlement from Ninth Circuit scrutiny.

Please let me know by close of business Friday, June 6th, whether you will agree to the proposed stipulation. I look forward to your responses.

Best regards,

Christopher Bandas

**UNITED STATES DISTRICT COURT**

WESTERN DISTRICT OF WASHINGTON
OFFICE OF THE CLERK
U.S. COURTHOUSE, SUITE 2310
700 STEWART STREET
SEATTLE, WASHINGTON 98101
(206) 370-8400

WILLIAM M. MCCOOL
District Court Executive
Clerk of Court

LORI A. LANDIS
Chief Deputy Clerk

July 11, 2013

Bandas Law Firm, P.C.
Christopher A. Bandas
500 N Shoreline Blvd, Suite 1020
Corpus Christi, TX 78401

Dear Mr. Bandas:

We are returning your check of \$2,000.00 received July 11, 2013 by FedEx. We are unable to except any money into the Court Registry without Court Order. I have spoken with Judge Robart's chambers and per Judge Robart the money is to be returned to you.

If you have any question please contact Judge Robart's chambers.

Thank you,

A handwritten signature in black ink, appearing to read "SueLynn Vazquez".

SueLynn Vazquez
Financial Specialist

BANDAS LAW FIRM, P.C.
Attorney at Law

CHRISTOPHER A. BANDAS

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July 9, 2013

United States District Court
Clerk's Office
700 Stewart Street
Suite 2310
Seattle, Washington 98101

JUL 10 2013

U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

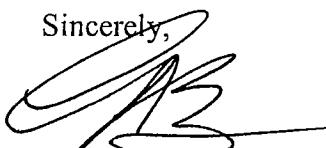
Re: Case No. 10-cv-1859-JLR
Michael Bobowski, et. al. v. Clearwire Corporation

Dear Clerk:

Enclosed please find a check for \$2000 to cover the Rule 39 costs in the court's order of July 8, 2013 (attached). See *Azizian v. Federated Dept. Stores, Inc.*, 499 F.3d 950 (9th Cir. 2007).

Please do not hesitate to contact us if you should have any questions or concerns.

Sincerely,



Christopher A. Bandas

CAB:kra
Enclosures

BANDAS LAW FIRM, P.C.

BANDAS LAW FIRM, P.C.
ATTORNEYS AT LAW

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PH. 361-698-5200

PAY TO THE
ORDER OF US District Clerk

\$ **2,000.00

Two Thousand and 00/100*****

DOLLARS

US District Clerk
United States District Court
700 Stewart St., Suite 2310
Seattle, WA 98101

MEMO

Clearwire-court costs Rule 39

AUTHORIZED SIGNATURE

MP

FIRST COMMUNITY BANK
416 N. WATER STREET
CORPUS CHRISTI, TX 78401
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05

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July 16, 2013

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Suite 2310
Seattle, Washington 98101

Re: Case No. 10-cv-1859-JLR
Michael Bobowski, et. al. v. Clearwire Corporation

Dear Clerk:

Enclosed please find a check for \$2000 to cover the Rule 39 costs in the court's order of July 8, 2013 (attached). See *Azizian v. Federated Dept. Stores, Inc.*, 499 F.3d 950 (9th Cir. 2007). The court issued an order permitting deposit of an appeal bond into the registry of the district court (Dkt. 144). Appellants are attempting to make a good faith deposit of the legitimate \$2,000 portion of the bond.

Please do not hesitate to contact us if you should have any questions or concerns.

Sincerely,

Christopher A. Bandas

CAB:kra
Enclosures